IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23747 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAKHUBEN SANGABHAI & 6 - Petitioner(s)
Versus
KARSANBHAI SANGABHAI SHIYAL - Respondent(s)

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Appearance :
MR AMAR D MITHANI for Petitioner(s) : 1 - 7.
RULE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 02/08/2006

ORAL JUDGMENT

1. By filing instant petition under Article 226/227 of the Constitution of India, the petitioners seek to challenge the impugned order

dated 11.11.2005 recorded below application Ex.46 in Regular Civil Suit No.115 of 2001 by the learned Principal Civil Judge, Una by which the application filed by the petitioners to correct name of the village appearing in the compromise pursis and the consent decree has been rejected.

2. The petitioners have filed Regular Civil Suit No.115 of 2001 against the respondent for partition of the property i.e., land bearing Survey No.74 of Sametar and houses situated at Rameshwar, on 28.5.2001. The suit came to be compromised between the parties and a compromise pursis was submitted and the judgment and decree came to be drawn accordingly on 17.4.2004. However, because of inadvertent mistake, the suit land being S.No.74 of “Sametar” was mentioned as of 'Rameshwar' in the compromise pursis and as a result of which in the consent decree also the same mistake has crept in.

3. On 11.10.2004 the petitioners filed

Execution Petition No.12 of 2004 and in the said proceedings, attachment order came to be passed on 14.2.2005. The Talati-cum-Mantri of Sametar/Rameshwar Gram Panchayat, on 20.9.2005 reported to the court that village Rameshwar had only 64 survey numbers. Therefore, on 1.10.2005 the Executing Court permitted to amend the word “Rameshwar” by 'Sametar'. Thereafter, on 13.10.2005, the petitioner made an application Ex.46 and applied for permission to carry out such amendment of place “Rameshwar” by 'Sametar' in the compromise pursis and consent decree. The learned advocate for the respondent has also put his endorsement that he has no objection if the amendment as prayed for is granted. However, the learned trial Judge rejected the said application, vide the impugned order dated 11.11.2005 which has given rise to instant petition.

4. Having heard Mr. Amar D. Mithani, learned Advocate of the petitioners and having perused

the impugned order and also the compromise pursis as well as the consent decree drawn on the basis of the compromise pursis and also the reported decision of the Bombay High Court in the case of Narhari Balku Kavade (deceased by Lrs.) and others v. Hanmanta Timma Pujari (deceased by Lrs.) and others, reported in AIR 2004 Bombay 342,lying down the proposition of law that merely because the petitioners/original plaintiffs have purported to apply only under Section 152 of the Code of Civil Procedure ('the Code' for short), relief cannot be denied to the petitioners/original plaintiffs, according to this Court, through inadvertent mistake of the advocates appearing for the parties, in the compromise pursis the land bearing S.No.74 was mentioned as of “Rameshwar” instead of 'Sametar' and as a result of this mistake, in the consent decree also the same mistake crept in. This mistake is apparent and because of this apparent mistake crept in the compromise pursis, in the consent decree also the same mistake appeared and this has happened because of the inadvertent

mistake committed by the learned advocates appearing for the parties at the time of submitting the compromise pursis. According to this Court, the learned trial Judge ought to have allowed the application Ex.46 in exercise of powers conferred on him under Section 152 of the Code to do complete justice between the parties so that the parties can have the fruits of the consent decree.

5. Seen in the above context, the petition deserves to be allowed by quashing and setting aside the impugned order dated 11.11.2005 recorded below application Ex.46 in RCS No.115 of 2001 by the learned Principal Judge, Una.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 11.11.2005 recorded below application Ex.46 in RCS No.115 of 2001 by the learned Principal Judge, Una is hereby quashed and set aside the

result of which would be that the application Ex.46 is allowed and accordingly necessary amendments/corrections be made in the compromise pursis and consent decree.

Rule is made absolute accordingly.

Direct service is permitted.

(A.M. Kapadia, J.)

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